

JS 44C/SDNY  
REV. 12/2005

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

ACCARDI, FRANK, et al.

**DEFENDANTS**

PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

**ATTORNEYS (IF KNOWN)**

Gregory K. McGillivray, WOODLEY & MCGILLIVRAY  
1125 15th Street, N.W., Suite 400, Washington, DC 20005  
(202) 833-8855

### UNKNOWN

**CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)**

This is an action under the Fair Labor Standards Act seeking declaratory judgment, backpay and other relief pursuant to 29 U.S.C. Section 207, 29 U.S.C. Section 216(b), and 28 U.S.C. Section 1331.

Has this or a similar case been previously filed in SDNY at any time? No  Yes?  Judge Previously Assigned

If yes, was this case Vol  Invol.  Dismissed. No  Yes  If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

**NATURE OF SUIT**

#### ACTIONS UNDER STATUTES

*Check if demanded in complaint:*

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

*Check YES only if demanded in complaint*  
**JURY DEMAND:**  YES  NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN *x* IN ONE BOX ONLY)

## ORIGIN

1 Original Proceeding       2a. Removed from  3 Remanded from  4 Reinstated or Reopened       5 Transferred from  6 Multidistrict Litigation       7 Appeal to District Judge from Magistrate Judge Judgment

2b. Removed from State Court  
AND at least one party is a pro se litigant

(PLACE AN *x* IN ONE BOX ONLY)

## BASIS OF JURISDICTION

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

1 U.S. PLAINTIFF     2 U.S. DEFENDANT     3 FEDERAL QUESTION (U.S. NOT A PARTY)     4 DIVERSITY

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF <input type="checkbox"/> 11 <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 11	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	DEF <input type="checkbox"/> 3	INCORPORATED <u>or</u> PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	DEF <input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	PTF <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	DEF <input type="checkbox"/> 2	INCORPORATED <u>or</u> PRINCIPAL PLACE OF BUSINESS IN THIS STATE	PTF <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	DEF <input type="checkbox"/> 4	FOREIGN NATION	PTF <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6	DEF <input type="checkbox"/> 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

SEE ATTACHED APPENDIX TO CIVIL COVERSHEET

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Office of the Secretary  
The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, NY 10003

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO:  WHITE PLAINS  FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE 8/21/06 SIGNATURE OF ATTORNEY OF RECORD Law, Jr. ADMITTED TO PRACTICE IN THIS DISTRICT  
RECEIPT #  NO  
                   YES (DATE ADMITTED Mo.        Yr.       )  
                  Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACCARDI, FRANK	)	
ADAMS, JENNIFER	)	
AIBA, JOSEPH	)	
ALMEYER, RICHARD	)	
BARBARELLO, JAMIE	)	Civil Action No.
BATES, REGINALD	)	
BATISTA, PEDRO	)	
BERGMAN, CHRISTOPHER	)	
BISHOP, STEVEN	)	
BOMENGO, THOMAS	)	
BORELLI, ANTHONY	)	
BRADY, GREGORY	)	
BRELAND, ALFRED	)	
BROWN, MICHAEL	)	
BURNS, DONALD	)	
BUTLER, STEPHEN	)	
CALIA, ROBERT	)	
CAPOZZI, KEVIN	)	
CARRASCO, AIDA	)	
CARRIGAN, JOSEPH	)	
CASO, CONSTANCE	)	
CHAMBLISS, RALPH	)	
CHIERCHIO, PAUL	)	
CHIN, STANLEY	)	
COLEMAN, MARIELLA	)	
COLLIS, JOHN	)	
CONKLIN, DONALD	)	
COOPER, ALFONSO	)	
COTTRELL, KEVIN	)	
CRIMARCO, FRANK	)	
CUMMINGS, LAWRENCE	)	
CURNYN, JOHN	)	
DALTON, MICHAEL	)	
DANCHUK, PETER	)	
DANESE, ELIZABETH	)	
DAVIS, WARREN	)	
DELGADO, JOSEPH	)	
DELGADO, WILLIAM	)	
DEMELLO, MICHAEL	)	
DESIO, FRANCES	)	
DILENA, RAYMOND	)	
DIPRIMO, DONATO	)	

DORNER, GEORGE  
DUANE, MARTIN  
DUBELBEISS, EUGENE  
DURHAM, JOHN  
EARLEY, PATRICK  
EDWARDS, MICHAEL  
EIRAND, JAMES  
ESPINOZA, JORGE  
ESPOSITO, FRANK  
ESPOSITO, LUANNE  
FARFALLA, FRANK  
FARRELL, JOHN  
FEELEY, KEVIN  
FERRIGNO, JOHN  
FINNIE, WILLIAM  
FIREHOCK, DONALD  
FITZGERALD, JOHN  
FLEMING, THOMAS  
FLORIE, MICHAEL  
FLORKOWSKI, KEVIN  
FLYNN, JOSEPH  
FLYNN, JOHN  
FONG, MILTON  
FRANCIS, DANIEL  
FRANK, GLORIA  
FUSCO, ANTHONY  
GACHETT, ALEBERT  
GARCIA, JUAN  
GARLAND, RAYMOND  
GAUNT, MARK  
GAVIN, ALYSON  
GAYSON, JOHN  
GIARAMITA, FRANK  
GIGLIA, CHARLES  
GLAZER, SCOTT  
GOLDBERG, LAURENCE  
GONZALEZ, REINALDO  
GORMAN, JOHN  
GREENSTEIN, AARON  
GREFF, ROBERT  
GRIFFITH, GARY  
GRIGLIO, JAMES  
GRIMALDI, MICHAEL  
GROSSBARD, DAVID  
GROSSI, STEPHEN  
GUTCH, WILLIAM

HADLEY-BAILEY, CYNTHIA  
HAMPDEN, JULIAN  
HARLEY, JAMES  
HARDY, NORMA  
HARRIS, CARLA  
HARRIS, NATHANIEL  
HEIDERSBENGEN, CARL  
HEIM, BARBARA  
HENNESSY, KELLYANN  
HENNESSY, MICHAEL  
HERING, THOMAS  
HERNANDEZ, PETER  
HERNANDEZ, RAMON  
HODGES, WARREN  
HOEY, THOMAS  
HOLLAND, RICHARD  
HORAN, SEAN  
HUBERT, FRANK  
JACOBS, FRANK  
JILES, ADELL  
JILLING, FRANK  
JOHNSON, PETER  
JOHNSON, VERNON  
JONES, KATHLEEN  
KEANE, SUSAN  
KEHOE, WILLIAM  
KEITH, RICHARD  
KENNEDY, THOMAS  
KING, CURTIS  
KING, JOSEPH  
KOEGL, KURT  
KOHLMANN, KENNETH  
KOUMOUTSOS, LOUIE  
KOWANA, NICHOLAS  
LATIMER, GEORGE  
LEARY, EUGENE  
LEATHER, JOSEPH  
LECLAIRE, DAVID  
LEW, ALAN  
LICORISH, DARCY  
LIM, DAVID  
LINK, ALAN  
LIPARI, ROBERT  
LOMONACO, THOMAS  
LORENZ, GEORGE  
MACIOCIA, LEWIS

MAHARAJ, DEWAN  
MANCUSO, RICHARD  
MANFREDI, RAYMOND  
MANGIERI, PATRIC  
MANIA, RICHARD  
MARESCA, JOHN  
MARIANO, JOHN  
MARAZZO, ANTHONY  
MARTEN, THOMAS  
MASELLA, RICHARD  
MATHIESON, JOHN  
MATTIACE, JOHN  
MAY, ROBERT  
MAYS, LAWRENCE  
McCLAVE, JOHN  
McDERMOTT, JAMES  
MCFADDEN, EDWARD  
MCHALE, THOMAS  
MCKEEVER, JOSPEH  
MCMAHON, DONALD  
MCNERNEY, PATRICK  
MESS, PAUL  
MILAN, SERGIO  
MORALES, RAUL  
MORAN, WILLIAM  
MORRIS, ANTHONY  
MUELLER, TIMOTHY  
MUNNELLY, RICHARD  
MURPHY, KEVIN  
NAFEY, RONALD  
NASTRO, LAURA  
NG, TERRY  
NOBLE, JOHN  
NYBRO, RAYMOND  
OBERHOFER, LAWRENCE  
O'DONNELL, JOHN  
OLAH, RICHARD  
O'NEILL, MARK  
PALERMO, MICHAEL  
PALERNO, MICHAEL  
PAUGH, RICHARD  
PEARSON, FRENCH  
PERDOMO, BORIS  
PETERS, SEAN  
PETRUZZIELLO, MARIO  
PICONE, WAYNE

PINCKNEY, INDIA  
PIRO, SALVATORE  
POTEPKA, MARK  
POULOS, STEVEN  
PREYER, WILLIAM  
PROSPERO, STEPHEN  
RAPP, EDWARD  
RAY, DANIEL  
REARDON, JOHN  
REILLY, JOHN  
RHEM, NADINA  
RIENZIE, JOHN  
RIVERA, SILFREDO  
ROBINS, KEVIN  
RODRIGUEZ, ALBERTO  
RODRIGUEZ, EDWIN  
ROMAN, MARK  
ROSS, WILLIAM  
ROSTRUP, GEORGE  
ROTOLO, STEVEN  
ROWAN, WILLIAM  
RUIZ, RICHARD  
RULLO, JOSEPH  
RUSSELL, SHAWN  
RYAN, PATRICK  
SANTIAGO, GEORGE  
SAVARESE, WILLIAM  
SCHIELS, WILLIAM  
SCHMIDT, ROBERT  
SCHULIZZI, PETER  
SEARANO, JOSEPH  
SELBY, CHERYL  
SERRANO, MICHELLE  
SIMONS, MICHAEL  
SIMS, DERRICK  
SMALLS, TIMOTHY  
SMITH, CORETTA  
SMITH, WILLIAM  
SNYDER, RONALD  
STITZ, JOSEPH  
STONE, ROBERT  
SULEWSKI, RONALD  
TINDALL, JULIAN  
TOHT, THOMAS  
TOOHEY, BRIAN  
TOTH, TIBOR

TOURLOUKIS, GEORGE  
TYNER, LORENZO  
WARD, KEVIN  
WAY, STEPHEN  
WEBER, WILLIAM  
WEIR, JOHN  
WEST, NARICE  
WHITE, KENNETH  
WICKERS, STEPHEN  
WYKA, JAMES  
YUM, NICHOLAS  
ZACHOWSKI, ROBERT

PLAINTIFFS,

v.

PORT AUTHORITY OF NEW  
YORK AND NEW JERSEY,

DEFENDANT.

**COMPLAINT**

**INTRODUCTION**

1. Plaintiffs, by and through their attorneys, Woodley & McGillivary, bring this action against defendant Port Authority of New York and New Jersey (hereinafter referred to as "Port Authority" or "defendant") and seek a declaratory judgment, back pay and other relief pursuant to 29 U.S.C. § 207, 29 U.S.C. § 216(b), and 28 U.S.C. § 1331 to remedy the defendant's willful and unlawful violations of federal law that are complained of herein.

**PARTIES**

2. Plaintiffs are and at all times material herein have been employed by defendant Port Authority in the position of police sergeant and/or detective

working within the Port Authority of New York and New Jersey Police Department.

3. Plaintiffs are identified in the caption of the Complaint and have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Complaint in the appendix. These written consent forms set forth each plaintiff's name and address.

4. Each of the plaintiffs in this action while employed by defendant in the position of sergeant and/or detective has been an "employee" within the meaning of the Fair Labor Standards Act, 29 U.S.C. Section 203(e)(1).

5. Defendant Port Authority is, among other things, a juridical entity amenable to suit under the FLSA in that it is, and was at all times material hereto, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x). The corporate headquarters of the Port Authority of New York and New Jersey is located at 225 Park Avenue South, New York, New York 10003. It is a public agency that operates and conducts its business within the State of New York, and within the geographic region of the Southern District of New York.

#### JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

## FACTS

8. At all times material herein, the plaintiffs have been employed by the defendant Port Authority in the position of sergeant and/or detective.

9. At times material herein, some of the plaintiffs have been assigned by defendant to work on various task forces with other public agencies, but while doing so such plaintiffs remain employed by defendant and their compensation has been controlled by defendant.

10. At all times material herein, while working in the position of sergeant and/or detectives on behalf of defendant plaintiffs have worked in excess of 40 hours per week.

11. In addition to their other compensation, plaintiffs receive payments such as shift differentials, schedule deficiency, longevity pay, and/or working out-of-zone pay.

## CLAIMS FOR RELIEF

12. During the times that plaintiffs have worked in excess of 40 hours per week, defendant has failed to provide plaintiffs with the rights and protections provided under the FLSA, including among other things overtime pay at the rate of one and one-half times their regular rates of pay for all hours plaintiffs have worked in excess of the hourly standards set forth under 29 U.S.C. § 207.

13. Section 207 of the FLSA, as well as the regulations of the U.S. Department of Labor, 29 CFR Part 778, *et seq.*, require that in the calculation of overtime pay due and owing under the FLSA, all forms of remuneration be included in the rate at which overtime is paid, with some limited exceptions set

forth under 29 U.S.C. § 207(e). Premium payments, such as shift differential, longevity payments, schedule deficiency and out-of-zone payments, and similar payments that are made in addition to employees' other compensation must be included in the rate at which overtime is paid and are not among the exceptions set forth under 29 U.S.C. § 207(e). With the exception of longevity pay, defendant has failed to include these premium payments in the regular rate of pay at which overtime pay is calculated for the plaintiffs, as required under the law.

14. By failing to compensate plaintiffs at the rate of one and one-half times the plaintiffs' regular rates of pay when plaintiffs have worked in excess of 40 hours a week, and by failing to include all of the plaintiffs' premium payments when calculating the rate at which overtime is paid, the defendant Port Authority has violated and is continuing to violate in a willful and intentional manner, the provisions of the FLSA. As a result, at all times material herein, the plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum period allowed under the law.

15. As a result of the defendant's willful and purposeful violations of the FLSA, there have become due and owing to the plaintiffs an amount that has not yet been precisely determined. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions to maintain

and preserve payroll and other employment records with respect to the plaintiffs from which the amount of defendant's liability can be ascertained.

16. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

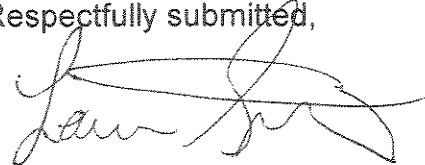
17. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

WHEREFORE, the plaintiffs pray that this Court:

- (a) Enter judgment declaring that the defendant has willfully and wrongfully violated its statutory obligations, and deprived each of the plaintiffs of his rights;
- (b) Order a complete and accurate accounting of all the compensation to which the plaintiffs are entitled;
- (c) Award plaintiffs monetary liquidated damages equal to their unpaid compensation;
- (d) Award plaintiffs interest on their unpaid compensation;

- (e) Award plaintiffs their reasonable attorneys fees to be paid by the defendant, and the costs and disbursements of this action; and
- (f) Grant such other relief as may be just and proper.

Respectfully submitted,



Lauren Schwartzreich (LS-8260)  
Gregory K. McGillivary (SSN: 0280)  
WOODLEY & MCGILLIVARY  
1125 15<sup>th</sup> Street, N.W.  
Suite 400  
Washington, DC 20005  
Phone: (202) 833-8855